

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP. IMPLANTABLE
DEFIBRILLATORS PRODUCTS
LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

This Document Relates to All Actions

PRETRIAL ORDER NO. 27

At the October Status Conference, Guidant alerted the Court that numerous plaintiffs in this MDL are joined together in certain cases in possible violation of Federal Rule of Civil Procedure 20.¹ Often, these plaintiffs have different health conditions, are from different states, sought treatment from different healthcare providers, were prescribed different treatments, were implanted with different devices, and were given different advice concerning whether to explant their devices. Given these differences, the Court can see no reason why these plaintiffs are joined, except maybe that savvy plaintiffs' lawyers did so to escape paying filing fees. The result—which the Court is very concerned about—is that single plaintiffs are treated unfairly because they must pay a single filing fee. Joinder also causes problems for the Court, especially when certain

¹ Later, the Court allowed Plaintiffs' Steering Committee and Guidant to submit letter briefs on this issue. The issue was also discussed at the January 24, 2007 status conference.

discovery motions are directed only at a specific plaintiff in one case or when a certain plaintiff is dismissed from an action with multiple plaintiffs. Guidant and Plaintiffs' Steering Committee are not particularly concerned with these results. But Guidant is concerned that it does not waive any of its rights with respect to whether or not cases with multiple plaintiffs should have their claims tried together.

This MDL has been in existence for over a year. If the joinder issue had been raised earlier, as in the Baycol MDL, the result today would be different. The Court would not allow multiple, unrelated plaintiffs to be joined together in one case, and the Court would ensure that all plaintiffs entered this MDL on an even playing field. But at this stage of the litigation, judicial economy and efficiency dictate a different result. The Court believes that the following result adequately addresses both Guidant's concerns and the Court's concerns about individual plaintiffs. Therefore, under Federal Rules of Civil Procedure 20 and 42, the Court, in its discretion, hereby **ORDERS** the following:

1. This Order shall apply to any action currently pending or to all such actions that will be initiated, transferred, or removed to this Court in which more than one individual plaintiff alleges claims against Guidant relating to the various implantable defibrillators and pacemaker devices at issue in this MDL (a "multi-plaintiff action").

2. The filing of a multi-plaintiff action shall not result in such plaintiffs' claims being joined for trial or for any other purpose, absent a Court Order issued in response to a properly filed motion. The party making such a motion bears the burden of establishing that joinder is appropriate. The filing of any multi-plaintiff action shall not be construed as a determination by the Court that such plaintiffs should be permissively

or otherwise joined under the Federal Rules of Civil Procedure, nor shall the filing of such actions be construed as a waiver of any contention by a defendant that such joinder is improper.

3. Prior to transfer or remand of any multi-plaintiff action to another United States District Court, the claims of each individual plaintiff shall be severed from the claims of other individuals alleged in the same complaint, without further motion by any party in this MDL, by this Court or by the court to which the claims are transferred or remanded. Derivative claims of individuals in multi-plaintiff actions shall not be severed from the claims of the individual who alleges that he or she was injured by one of the various implantable defibrillators and pacemaker devices at issue in this MDL.

4. Absent consent of all of the parties to a multi-plaintiff action, the claims of each individual plaintiff, as well as the claims of any derivative plaintiff related thereto, shall be transferred or remanded to the United States District Court in which (a) the individual plaintiff resides at the time of the order remanding or transferring the claims; (b) a substantial part of the events or omissions giving rise to the claim occurred; or (c) a substantial part of the property that is the subject of the action is situated. This provision shall not be construed as a waiver of any party's contention that venue is improper in the district to which another party requests transfer or remand pursuant to this Order.

5. Upon transfer or remand, individual plaintiffs in any multi-plaintiff action shall pay individual filing fees, as would ordinarily apply in separately filed actions, and shall take any other action required by the United States District Court to which the claims are transferred or remanded.

IT IS SO ORDERED.

Dated: January 30, 2007

s/Donovan W. Frank
DONOVAN W. FRANK
Judge of United States District Court